FEDERAL COURT.

Abu Talib bin Osman (Senior Federal Counsel) for the appellant.

A. Wilson for the respondent.

Suffian L.P. (delivering the judgment of the Court): On March 11, 1972, an RMAF helicopter crashed at the 11th m.s., Kampung Gambang, Kuantan. Flying Officer Lim Bok Choon who was travelling on it was killed. His old mother sues the Federal Government for loss of support and dependency and for damages.

The Government applied by summons-in-chambers for the proceedings to be set aside for non-compliance —

(a) with the provisions of the Government Proceedings Ordinance, 1956; and

(b) with the Public Authorities Protection Ordinance, 1948 (the suit was brought over twelve months after the accident).

When the application was heard, the government proceeded only on ground (b) and the learned judge dismissed the application on the ground that at the time of the summons-in-chambers the government had not even filed their statement of defence. The judge considered that the fact that by the time the summons was heard the government had filed their defence pleading among other things limitation, did not matter.

We dismissed the government's appeal from the learned judge's judgment; we upheld it but, as stated during arguments, for reasons that are different.

The government argued that, as the Public Authorities Protection Ordinance applied, this suit was out of time as it had not been commenced within twelve months next after the act, neglect or default complained of, as stipulated by paragraph (a) of section 2 of the Ordinance. To agree with the government at this stage would be to accept without proof that the act of the government complained of was "an act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority." As the pleadings stand, these things cannot be taken for granted. Also Act A252 has extended the period of limitation from twelve months to thirty-six months, and as stated by Mr. Wilson for the plaintiff it is arguable that this amendment may be retrospective, so as to save this suit though brought after twelve months.

Appeal dismissed.

Solicitors: *Wilson & Co.*

CHOP SOON HOE v. TAN KEE

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) December 16, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 72 of 1975]

Landlord and Tenant — Notice to quit — Tenant in arrears in payment of rent — Controlled tenancy — Whether subject to provisions of National Land Code — National Land Code, section 235 — Control of Rent Act, 1966, s. 16(1).

The respondent had obtained judgment for possession of premises, of which the appellant was the tenant, and the judgment had been upheld in the High Court. The appellant appealed to the Federal Court. One of the grounds of appeal was that the respondent (landlord) should have served a notice in writing under section 235, of the National Land Code.

Held, dismissing the appeal: (1) the learned appellate judge was right when he held that on the evidence the rent of the premises was payable in arrear at the end of the month, that it was payable on demand at the premises, that it was demanded on the premises not once but many times, that it was not paid and was in arrear for more than 14 days and that a valid notice to quit had been served on the appellant;

(2) section 235 of the National Land Code deals with tenancies generally, whereas the Control of Rent Act deals specially with controlled premises and section 235 of the National Land Code cannot apply to controlled tenancies which are regulated by the Control of Rent Act.

FEDERAL COURT.

Kam Woon Wah for the appellant.

Atma Singh Gill for the respondent.

Suffian L.P.: The plaintiff owns shophouse 27 Paul Street, Seremban, of which the defendant is the tenant. The shophouse is subject to the Control of Rent Act, 1966. The plaintiff claimed possession under section 16(1)(a) of the Act on the ground that the rent lawfully due had been in arrear for fourteen days or more.

The plaintiff won her case in the Magistrate's Court and again (on appeal by the defendant) in the High Court.

The defendant appeals to us.

In my judgment this appeal should be dismissed.

To succeed, the plaintiff had to prove that —

(1) the rent was payable either in advance or in arrear;

(2) the rent was payable on demand somewhere;

(3) rent was demanded at the right place;

(4) it was not paid and was in arrear for 14 days or more; and

(5) a valid notice to quit had been served on the defendant.

With respect, I think that the learned appellate judge was right when he said that on the evidence the rent was payable in arrear at the end of the month, that it was payable on demand on the premises, that it was demanded on the premises not once but many times, that it was not paid and was in arrear for more than 14 days, and that a valid notice to quit had been served on the defendant.

There was ample oral evidence which if believed (as it was) would prove that the defendant was a bad paymaster. This was more than corroborated by the four receipts produced. The one at page 81 of the record shows that the defendant did not pay rent due

for the three months of July, August and September, 1968, until October 7, 1968. The receipt at page 82 shows that the defendant did not pay rent due for the four months of October 1968 to January 1969 until February 24, 1969. The rent due for the six months of May to October, 1969, was not paid until November 8, 1969 (receipt on page 84). The rent due for the five months of November 1969 to March 1970 was not paid until August 1, 1970, leaving still unpaid at that date rent for the four months of April to July, 1970.

With respect, I think that the trial court was entitled on the evidence to hold, as it did, that there were several demands made for the rent on the premises both by the plaintiff and by her son and that at the time of the filing of the suit the rent was in arrear for seven months.

The notice to quit at page 74 simply told the defendant that as his rent had been in arrear for seven months from April 1 until October 31, 1970, he was to quit on or before December 31, 1971, and that his tenancy was being determined on that date or on the expiry of the next complete month; and the defendant complained before us that the plaintiff did not and should have complied with section 235 of the National Land Code which reads:

"235. Notwithstanding anything to the contrary contained therein, no person or body shall be entitled to enforce, by action or otherwise, the forfeiture of any lease, sub-lease or tenancy for breach of any of the provisions thereof unless and until that person or body has served on the lessee, sub-lessee or tenant for the time being a notice in writing —

(a) specifying the particular breach complained of;

(b) if the breach is capable of remedy, requiring him to remedy it, and

(c) in any case other than non-payment of rent requiring him to make compensation in money for the breach,

and the lessee, sub-lessee or tenant on whom the notice is served has failed, within a reasonable time thereafter, to remedy the breach (if it is capable of remedy) and to make reasonable compensation in money therefor to the satisfaction of that person or body."

It is said that the plaintiff should have served on the defendant a notice in writing —

(a) saying that the defendant was in arrear with his rent and

(b) requiring him to pay up,

and that as she did not, she should not have been given vacant possession. It is said that the defendant should have been given a chance to pay up the rent in arrear, that in fact immediately after receiving the notice the defendant did tender the rent and that as it has been tendered (though refused) it was not in arrear at all.

With respect, I do not think there is any merit in this argument. Section 235 of the Code deals with tenancies generally, whereas the Control of Rent Act deals specially with controlled tenancies, and I do not think that section 235 can apply to controlled tenancies which are regulated by the Control of Rent Act. To hold otherwise would be to nullify the provisions of section 16(1)(a) of the Act. If the defendant were allowed to benefit from section 235 of the Code, every time he is in arrear he would receive a written notice saying that he is in breach of covenant because he has not paid rent for so long, and requiring him to remedy the breach, and he would then tender the required amounts, and thereafter being a bad paymaster he would repeat the same breach and so on *ad infinitum;* and thus the landlord would never be able to get rid of him at all. The Act has made drastic curtailments of a landlord's rights to deal with his property in any way he likes, but I do not think that it is the intention of the legislature to enable a tenant to thumb his nose at his landlord in this way. I think that the intention of the legislature is that when rent falls due, is demanded (even orally) and is not paid as demanded and remains due for 14 days or more, all that the landlord need do is to give a valid notice to quit (as has been done here) without giving the tenant an opportunity to tender the rent due.

Under subsection (3) of section 16 the learned magistrate may allow the defendant to remain in possession even though the defendant has been in arrear with the rent as alleged. This subsection (3) was drawn to her attention, and yet she decided not to grant relief to the defendant. I do not think that this is a proper case where this court should interfere with the exercise of her discretion.

I would therefore dismiss this appeal with costs, the deposit to go to the respondent towards taxed costs.

Lee Hun Hoe C.J. (Borneo) and **Wan Suleiman F.J.** concurred.

Solicitors: *Kam Woon Wah & Co.; Atma Singh Gill & Gill.*

DIRECTOR-GENERAL OF INLAND REVENUE v. R.

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Wan Suleiman F.JJ.) December 22, 1975]
[Kuala Lumpur — Federal Court Civil Appeal No. 23 of 1975]

Income Tax — Termination of service — Payment of compensation — Whether compensation for loss of employment or gratuity in respect of having or exercising employment — Income Tax Act, 1967, s. 13(1)(a) and (e) and Schedule 6, para. 15(1)(b).

This was an appeal from the decision of Gill C.J. ([1975] 1 M.L.J. 183). The respondent had been employed by the Eastern Mining Metals Company Limited as a railway engineer on a number of short term contracts, the last of which dated September 24, 1969 made no mention of duration. Under the terms of each agreement termination was by three months' notice in writing to be given by either party. When it became apparent that the end of the mines was approaching, the company as an inducement to those senior officers whom they wished to retain gave an assurance in the form of a confidential letter that if the services of a non-Malaysian officer were no longer required, the officer would be paid a lump sum equal to one year's salary by way of compensation for loss of expectation of further employment. The respondent's services were terminated under the provisions of his last service agreement and he was paid a lump sum of $35,400. He was then 48 years old and had worked with the company for 19 years. The appellant was assessed for tax on the sum of $35,400 and on appeal the Special Commissioners held that the sum was paid to the appellant in respect of services rendered and was a remuneration or gratuity within the meaning of section 13(1)(a) of the Income Tax Act, 1967. On appeal by the taxpayer, to the High Court Gill C.J. held that the payment was by way of compensation for loss of employment and as such was not liable to income tax by reason of the exemption under paragraph 15(1)(a) of Schedule 6 to the Income Tax Act. The Director of Inland Revenue appealed to the Federal Court.